

THE
CASE
OF THE
HEIRS at Law
TO
George Monke,
LATE
Duke of *ALBEMARLE.*

L O N D O N :

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T H E
C A S E.

D UKE George, on the Marriage of *Christopher*, therein called Lord *Torrington*, with Lady *Elizabeth*^{20 and 21st Dec. 1669.} *Cavendish*, (one of the Daughters of the late Duke of *Newcastle*,) settles all his Mannors and Lands in *England* and *Ireland*.

To the Use of himself for Life.

Remainder to *Christopher* for Life.

Remainder to the First, and other Sons of *Christopher* in Tail-Male.

Remainder in Fee to the Heirs of Duke *George*.

Subject to 2000 *l.* per *Annum*, Jointure to Lady *Elizabeth*.

Duke *George* died, leaving no Issue of his *Jan. 1669.* Body Lawfully Begotten.

Christopher, the Suppositious Son, died *Oct. 1687.* without Issue to take by the last Intail.

By whose Death the Reversion or Remainder in Fee as limited by Duke *George*

came to *Elizabeth*, (Daughter and Heir of *Thomas Monke* of *Potheridge*,) Elder Brother of *Duke George*,) who was then the Widow of *Captain Pride*, and is now by several Descents come to *Mary* and *Anne* (Daughters of *Elizabeth Sherwin*, deceas'd, by *Captain Gibbs*) her First Husband, as the Lineal Descendants of the said *Thomas Monke*.

Against these Heirs at Law the Claimants under Christopher pretend Title.

1. By a Will of *Christopher's* in 1675, and a Deed confirming it in 1681, set up by *John* late Earl of *Bath*, *Barnard Granville* his Brother, and *Sir Walter Clarges*, [all Deceased,] who thereby claimed the whole Estate, [except *Migdham* in *Berks*,] subject to 8000 *l. per Annum*, part thereof devised to *Christopher's* Dutcheſs during her Widowhood, and 4000 *l. per Annum* after her Second Marriage.

2. By a Will of *Christopher's* in 1687, whereby the greatest Part is devised to the Dutcheſs for her Life, Remainder to *Sir Walter Clarges*, *Sir Beville Granville*, deceas'd, *Thomas* and *Henry Monk* of *Ireland*, and to the Executors of *Duke Christopher* to pay his Debts: The Earl of *Bath* first got the Possession, and had several Verdicts under the Deed of 1681, against the Will of 1687, then set up by the Dutcheſs.

But

But the Late Duke of *Mountague* afterwards Marrying the Dutchess of *Albemarle*, had Four Verdicts against the Deed of 1681, which was so far detected that it was never after admitted to be read, or given in Evidence, in Court.

After this the Duke of *Mountague* got some Conveyance of the Reversion from the Monks of *Ireland* by Way of Mortgage for 12000 *l*.

This Mortgage gave the Duke no Title to the Estate, but to gain that, he first contracted with *Thomas Pride*, then Son and Heir of the said *Elizabeth*, Daughter of *Thomas Monke* of *Potheridge*, and with Captain *Gibbs*, who had then Married the Sister of the said *Thomas Pride*, for the Purchase of the whole Estate, (except *Potheridge*,) and Conveyances were drawn, but *Thomas Pride* and Captain *Gibbs* differing about the Division of the 60000 *l*. the Purchase Money, the Deeds were not Sealed.

Which *Potheridge* (the Barony, and Hereditary Estate of the *Monkes*) the Earl of *Bath* had then before purchased of *Thomas Pride* and his Mother an Admission for ever of the plain and undoubted Title of these Heirs, where we might leave the Case to the World: But to shew how the Claimants have gone contrary to the Light of their own Title which they hold under.

And after the Death of *Thomas Pride* and Captain *Gibbs*, and the Marriage of *Elizabeth* with *William Sherwin*, Esq; the Duke prevailed with Mr. *Sherwin* and his Wife to levy a Fine to the Duke of the Inheritance of *Clithero* (3000 *l. per Annum*,) and to confirm to him the rest of the Dutcheſs's Jointure for divers Considerations, as would appear by the Deed, of which *Sherwin* had no Counterpart.

Here again was the Title of these Heirs taken anew by Confirmation of the Estate for Life, on Agreement to yield them quiet Possession.

And the Solemnity with which that Noble Duke executed this Agreement was observable and uncommon, with his Hand upon his Heart, and Eyes lift up to Heaven, he agreed for the Dutcheſs and himself, in Consideration thereof, that the Possession of the Residue of the Jointure Lands should be quietly yielded up at her Death to Mr. *Sherwin* and his Wife, or her Heirs, and declared he would Assist and Support them with Money, and Aid and Favour their Cause with his Council, in order to avoid the Claims of the Earl of *Bath*, and others, in the mean Time.

The Claimants so purchased, and took New Estates from the Ancestors of these Heirs,

Heirs, being Conscious that *Christopher*, named in the Settlement, was not Son or Heir of Duke George, but was the Legal Son of *Thomas Radford*, to whom his Mother was lawfully Married Twenty Years before his Birth, and continued a Feme Covert to the said *Radford* 17 Years, or more, after his Birth, which renders it impossible for *Christopher* to be the Legal Son of Duke George, and therefore *Christopher* by the Settlement was only Tenant for Life, with a Remainder in Tale-Male; and the Reversion was not vested in him, but by his Death without Issue Male did remain and come to the Descendants of *Thomas Monke of Potheridge*, as aforesaid.

The Evidence to prove him the Legal Son of *Radford*, is,

The Register of *St. Lawrence Poultny, London*, in 1632, of the Marriage of *Thomas Radford, Singleman*, with *Anne Clarges, Spinster*, who is agreed to be the Mother of Duke *Christopher*, with a Licence for that Marriage, Register'd in Doctors-Commons.

The Register of *St. Martin's in the Fields* of Four of their Children there Baptized, and the Register of the Savoy of some of their Childrens Burials.

Their Cohabitation in the Parish of *St. Martin's*; and having a Shop together at the Sign of the *Three Gypsies* in the *New Exchange*,

where *Radford* was a Milliner, and she a Sempstres, till she left him, on which Mrs. *Clarges*, her Brother, then an Apothecary, (afterwards Sir *Thomas*,) took her to his House, where she became to be Sempstres to Colonel *George Monke* (after Duke) till he went to Sea.

But her Brother seeing her with Child, turned her away, and then she lodg'd in a Garret at a Taylor's House in the *Strand*, near St. *Clement's* Church, where she was delivered of *Christopher*, and was assisted with Necessaries by some of the Neighbours.

That *Radford* came to her there, and upbraided her with her Child, and came to enquire for her after she was gone.

But she having told her Brother that Colonel *Monke* promised her if the Child prov'd a Boy to make him his Heir, her Brother (after the Birth) went down to the Colonel, then Commander in the Fleet, with a Letter from her, and at his return removed his Sister first to *Deptford*, and then to Sir *Peter Killegrew's*, in the *Dutchy-lane*, near *Somerset-house*; and some time after Colonel *Monke's* return he owned her for his Wife, and took her to *Scotland* with him, and after the Restoration kept her at the *Cock-pit*.

And then *Radford* was to be sent away, and have a Pension to keep from her.

That

That upon their return from *Scotland*, when *Christopher* was about 7 Years Old, his Mother calling on some of her Neighbours, (who had assisted her at his Birth,) brought *Christopher* with her, and said, That was the Spark she had been delivered of at the Taylor's House, and invited them to the *Cock-pit*.

That after this Advancement she allowed *Radford* a Pension to keep from her, and *Radford* by her Example took another Wife, by whom he had a Boy and a Girl.

The Boy was at the Charge of *Christopher's* Mother, then called *Dutchess* of *Albemarle*, placed out Apprentice to a Fiddler by the Name of *Thomas Radford*, Son of *Thomas Radford*, Milliner, (deceas'd,) and to any that asked her she said *Radford* was dead, though he was seen several Times by the Persons she said it to.

And in 1669, upon the Death of Duke *George*, *Radford* came to the *Cock-pit* to demand his Wife, which cast her into such a Melancholy that she refused all Sustainance but what was forced upon her, and died in 20 Days.

That the Day she was put into her Coffin *Radford* was met again at the *Cock-pit* coming down Stairs.

That *Radford's* Pension was paid by the *Dutchess's*

Dutchess's Cashire, who at her Death said his Orders were then at an End.

Against this the Claimants under *Christopher* offer to prove him the Son of Duke *George*.

1. By a Register of *Bermondsey* of the Marriage of *George Monk* with *Anne Radford* in 1652.

Answ. Which being a Second Marriage, *Radford* then, and 17 Years after, so living, and the First undissolved Avinculo, this Last was null and void; but *Christopher* was Son and Heir to *Radford*, as Born under that Marriage, so could not be to Duke *George*, it being impossible.

2. Their Cohabitation, and his owning her his Wife and Dutchess.

Which makes no Amendment.

3. By *Christopher's* Enjoyment of *Theobalds*, (against the Crown,) 20 Years after the Death of Duke *George*, as Heir Male of his Body.

Answ. Which King *Charles* for good Reasons might permit, but would not purchase under his Title, refusing *Mote-Park* after he had agreed for 7000 *l.* and chose rather to become his Tenant, and did so at 300 *l.* per Annum, having notice of *Radford's* Marriage, as before.

4. By an Act of Parliament 23d *Car.* 2d, Entitled,

Entitled, *An Act to enable Christopher, Duke of Albemarle, to convey Mannors which had been Mortgaged to Duke George.*

Ans. Which Act is clear to another Purport, not to annex this Estate to the Duke or his Honour, nor can it be so used. The Act styles him as he was called; the King permitted his Title to gratifie Duke George to own him.

And the Act of Parliament rather shews Suspicion that *Christopher* could not reconvey he Mannors as Heir to Duke George, and that therefore it was procured to enable him to reconvey by the Name of Duke *Christopher*, tho' he were not the Heir of Duke George, the Estate of these Heirs being not meerly Accidental, but of Right, and (no doubt) considered well by Duke George on creating the Intail.

Because their Ancestors, *Thomas Monke*, settled his Paternal Estate from his own Daughter upon Duke George, who in Gratitude took Care of the Marriage of his Niece, (the Grand-Mother of the present Heirs,) and bred up their Mother, and left the Estate to descend on them for want of Issue of *Christopher*, and had *Christopher* so left it there had been no Occasion for these Disputes.

And tho' the Will of 1687 was not convicted
(as

(as the Deed of 1681 was,) and that the Devise in that Will, by *Christopher* to his Dutcheſs, was no more than what was highly Juſt and Honourable for him to do, having no Iſſue; and therefore Mrs. *Sherwin* upon ſuch Conſideration readily confirmed it; nor would her Daughters now Impeach it, yet they cannot attribute the Deviſes in that Will of the Reverſion to the *Monkes of Ireland* to be the genuine Act of Duke *Chriſtopher*, they being no Relation to Duke *George*.

But as what Part of the Eſtate was moſt valued by the Two Chief Claimants under Deed and Will, they thought fit to ſecure by Conveyances from the Heirs at Law.

We beg theſe following Questions.

1ſt, If Duke *Chriſtopher* were lawful Heir of Duke *George*, why they ſo purchaſed with ſuch large Sums of theſe Heirs?

2d, If he were not legitimate, why they obſtinately inſiſt on the Title under him againſt their own Purchaſes?

3d, Why they inſiſt on their Title ſo many different Ways, and the one by Deed and Will againſt the other, and yet in Turns by them both, when there can but one be Right, and they have ſo admitted both to be Wrong by Purchaſe of the Heir?

Potheridge in *Devonſhire* the Earl of *Bath* purchaſed from Mr. *Pride* and his Mother,

ther, Heirs of *Thomas Monke* of *Potheridge*, and paid 8500 l. for it.

The Honour of *Clithero* in *Lancashire* the Duke of *Mountague* got the Conveyance of from *Mrs. Sherwin* in 1699, as abovementioned, tho' after the Earl of *Bath* and he had joined in an Agreement, as under the Deed, which shews the Diffidence still of that Title.

And for the rest they seem to be shifting their Titles from one to another, as if none of them liked their own.

Sir *Walter Clarges* at the Two first Trials for *Sutton* in *Yorkshire* made his Claim under the Deed of 1681, and at the last Trial for the same Lands makes his Claim under the Will of 1687.

The Mannor of *Clewar* in *Berks* continued under the Deed of 1681 against the Devises of the Will 1687.

The Claimants under the Deed of 1681 hold the Lands in *Ireland* against the Will of 1687.

The following Circumstances are Remarkable in the Claimants Evidence, besides others relating to Sir *Thomas Higgin's*, who died in Court : To *Mrs. Chapman*, who died by the House falling down upon her, and several others Things therein, which are omitted to avoid Reflections.

Sir

Sir *Thomas Clarges*, to qualifie his Sister to be Lord Admiral *Monke's* Wife, swore she had acquired 2000 *l.* before she was brought to Bed of *Christopher*; and that the Occasion of her Delivery in the Garret was by going to her Taylor to try a Pair of Stays, and there fell in Labour on a sudden.

Whereas that Taylor was only a Man's Taylor, and Stays for Women were not then in use; and one *Mr. Dreyner*, Sir *Thomas Clarges's* Apprentice, proved her there Ten Days before her Delivery, and lay in by the Name of *Radford*.

The Register of *Bermondsey*, (of the Marriage of *George Monke* with *Anne Radford*), which being produced in Court, appeared to be inserted in New Paper, different from the other Part of the Book, and could not be found in the former Clerk's Time.

The whole Tenour of the Proof of the Deed 1681, which was made appear to have been Engrossed by the Earl of *Bath's* Scrivener in 1687, and the Seal wherewith it was Sealed, to be Engraved about the same Time by that Earl's Directions.

But these Claimants among them have the Possession as their Title, and this they say the Heirs at Law can't recover from them by Impeaching the Marriage of Duke *George* with *Christopher's* Mother, (after his

his Death,) which was not called in Question during his Life, and from which he enjoyed the Title and Ensigns of his Honour from King, Lords and Commons, till his Death.

As for not calling it in Question during the Life of Duke *Christopher*, the Heirs at Law had then no Occasion for it, but are at liberty to do it still, being no Ways barr'd by any Statute of Limitation; for the Difference of a Man's being the Son of a Commoner, or of a Peer, is not any Disability to be tried by Inspection, as Ideotry, Non-Age, &c.

In 1702 the Earl of *Bath*, J. Lord *Granville*, Sir *Walter Clarges*, Sir *Bevil Granville*, brought a Bill in Chancery for a perpetual Injunction, and by a Surprize got a Temporary Injunction, and stopt the proceeding at Law of the Heirs until the 28th of *June* 1709; then my Lord Chancellor dismiss'd their Bill, with Cost to be paid to the Heirs at Law.

F I N I S.

his death, which was not called in Question during his life, and from which he enjoyed the full and perfect use of his Reason from King, Lords and Commons, till his Death.

As for not calling it in Question during the Life of Duke, whatever the House of Law had then no Question for it, but as to Liberty to do it still being no Ways barred by any Statute of Limitation; for the Licence of a Man selling the Son of a Commoner, or of a Peer, is not any Disability to be tried by Inspection, as Ideology, Non Age, &c. In 1703 the Earl of Bath, Lord Chancellor, Sir William Vane, Sir Henry Gwynne, brought a Bill in Chancery for a perpetual Injunction, and by a Statute gave a Temporary Injunction, and kept the proceeding at Law of the House until the 28th of June 1703: then my Lord Chancellor dissolved their Bill, with Cost to be paid to the House at Law.

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